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## Manzo v. Mayor of Marlboro, 838 A.2d 534 (N.J. Super. Ct. Law Div. 2003)

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of the relevant factors. Thus the court found a regulation can only be set aside if it is proved to be arbitrary or capricious, plainly transgresses the statute it purports to effectuate, or alters the terms of the statute and frustrates the policy embodied in it.

The court found DEP's adoption of LPM to delineate wetlands did not flout the enabling statute or undermine the legislative intent. Since DEP classifies wetlands supporting the habitats of threatened or endangered species, the court noted that LPM broadens the inquiry to include habitats of actual sightings or physical evidence of these species, and contiguous wetlands that contain the natural characteristics that make the wetlands suitable for species to populate. The court held that because endangered or threatened species are not stationary many rare species require continuous blocks of habitat. Furthermore, rapid suburbanization of landscape could lead to the loss and degradation of critically important wild life habitats. The court concluded the adoption of a more protective approach through LPM was neither inconsistent with governing statute, unsupported by the record, nor arbitrary or capricious. Thus, the court concluded that the adoption of LPM did not exceed DEP's statutory mandate.

*D.M. Shohet*

**Manzo v. Mayor of Marlboro, 838 A.2d 534 (N.J. Super. Ct. Law Div. 2003)** (holding township may enact ordinances using residential cluster development to reduce pollution in nearby streams and waters).

Rose Manzo and Morgan Estates ("Manzo") filed suit against Marlboro Township ("Marlboro") challenging Marlboro's Zoning Ordinance in the Monmouth County Superior Court. Manzo alleged that (1) the Zoning Ordinance was inconsistent with the Township's Master Plan, (2) the ordinance represented fiscal zoning, (3) Marlboro improperly sought to reduce residential development density, (4) the ordinance violated the Fair Housing Act by discriminating against families with children, and (5) the means Marlboro used to achieve its stated goal were unreasonable. The court dismissed each of Manzo's claims.

The estate of Rose Manzo owned 167 acres of undeveloped land in Marlboro. Manzo and Morgan Estates, L.L.C. ("Morgan Estates") entered in an option agreement for Morgan Estates to purchase the property by 1999. The property was divided into quadrants by streams, ultimately running into Big Brook, which runs along the northern boundary of the property. Until August 1999, the property was zoned for lots of 30,000 square feet, similar to other properties in the area. In the same month, Manzo and Morgan Estates executed the prior agreement, and soon thereafter, Marlboro created a new zoning district named the Stream Corridor Preservation Residential District-II ("SCPRD-II"). The SCPRD-II required a minimum lot size of 80,000

square feet and allowed some optional clustering provisions. This amendment to the ordinance was the subject of Manzo's suit.

In order to assess the challenge to SCPRD-II, the court first recognized the presumption of validity accorded municipal ordinances. The court then quickly dismissed four of Manzo's contentions as irrelevant to the factual situation. Next, the court evaluated whether Marlboro's purpose in adopting the ordinance creating the SCPRD-II was reasonable and therefore valid.

Manzo first asserted that the purpose of the ordinance was to allow Marlboro to limit the number of households, although Marlboro's expressed purpose was to protect streams, particularly nearby Big Brook. The court concluded that evidence such as the Township Master Plan, the Township Planner, and Township Council minutes supported Marlboro's stream-protecting purpose. The court further identified New Jersey's legislation and a Municipal Land Law that noted the correlation between residential and commercial development and reduced water quality.

Manzo further requested the court to examine the means utilized by Marlboro to support this goal. The court determined that Marlboro's ordinance exhibited a legitimate relationship to its purpose because experts agreed that cluster developments allow less land disturbance and less opportunity for pollution to reach waterways. Concluding that the SCPRD-II cluster provisions supported Marlboro's objective for less-polluted streams, the court dismissed Manzo's complaint.

*Becky Bye*

## OHIO

**Witfoth v. Kiefer, No. L-02-1325, 2003 Ohio App. LEXIS 6766 (Ohio Ct. App. 2003)** (holding (1) no reasonable person could consider a low yielding well a material defect or problem, (2) sellers need not disclose low well yield on disclosure form, and (3) nondisclosure did not amount to fraudulent concealment).

In 1998, Frank and Mary Witfoth filed suit in Lucas County Court of Common Pleas against James and Kim Kiefer alleging fraudulent representation and concealment arising out of the sale of the Kiefer's home. The Kiefers disclosed a well supplied water to the home on the sales disclosure form but made no indications about the condition or yield of the well. Prior to purchase, the Witfoth's professional home inspector advised them to hire a specialist to measure the well's yield. The Witfoths declined, trusting that the sales disclosure would have indicated low well yield. After move in, the Witfoths discovered the water flow was insufficient for consecutive showers or loads of laundry. A pump test later determined the well yield was 1.5 gallons per minute